

REMARKS:

Claims 1-5, 8-19, and 22-28 are currently pending in the application. Claims 1-5, 8-19, and 22-28 stand rejected under 35 U.S.C. § 102(e) over U.S. Patent No. 6,629,128 to Graham W. Glass ("Glass").

Although the Applicants believe claims 1, 11, 12, 15, and 25-28 are directed to patentable subject matter and are in condition for allowance without amendment. The Applicants have amended claims 1, 11, 12, 15, and 25-28 to more particularly point out and distinctly claim the Applicants invention. No new matter has been added.

REJECTION UNDER 35 U.S.C. § 102(e):

Claims 1-5, 8-19, and 22-28 stand rejected under 35 U.S.C. § 102(e) over Glass.

Although the Applicants believe claims 1, 11, 12, 15, and 25-28 are directed to patentable subject matter and are in condition for allowance without amendment. The Applicants have amended claims 1, 11, 12, 15, and 25-28 to more particularly point out and distinctly claim the Applicants invention. By making these amendments, Applicants do not indicate agreement with or acquiescence to the Examiner's position with respect to the rejections of these claims under 35 U.S.C. § 102(e), as set forth in the Office Action.

The Office Action alleges that Glass discloses a component-based distributed software system and a method of providing data access in a component-based distributed software system. (7 July 2005 Office Action, Pages 2-3). The Applicants have reviewed Glass in detail, particularly looking for a component-based distributed software system and a method of providing data access in a component-based distributed software system, relied upon by the Examiner. However, Glass fails to disclose each and every limitation recited by claims 1-5, 8-19, and 22-28. Thus, the Applicants respectfully submit that claims 1-5, 8-19, and 22-28 patentably distinguish over Glass.

For example, with respect to amended independent claim 1, this claim recites:

A component-based distributed software system, comprising:
at least one server component supporting one or more server objects having associated data, the server component being within a first container; and
at least one client component that is within a second container, distributed from the server component, and operable to:
access data associated with one or more of the server objects such that whether the server component is local to or remote from the client component is substantially transparent to the client component;
if the first container is local to the second container, in order to access server object data, execute data access operations optimized for local communications; and
if the first container is remote from the second container, in order to access server object data, access at least one proxy component that is:
within the second container;
supporting one or more proxy objects each providing a local version of a corresponding server object: and
operable to:
provide the client component with access to data associated with a proxy object in response to the client component requesting data associated with the corresponding server object;
execute data access operations optimized for remote communications to access data associated with the corresponding server object; and
substantially immediately reflect all changes to data associated with the proxy objects back to data associated with the corresponding server objects. (Emphasis Added).

Amended independent claims 11, 12, 15, 25-28 and independent claims 13 and 14 recite similar limitations. Glass fails to disclose each and every limitation of amended independent claims 11, 12, 15, 25-28 and independent claims 13 and 14. The Applicants respectfully traverse the Examiners assertions regarding the subject matter disclosed in Glass.

The Applicants respectfully submit that Glass has nothing to do with amended independent claim 1 limitations regarding a component-based distributed software system comprising a client component distributed from a server component supporting server objects and operable to access data that is substantially transparent, whether local or remote to the client component and further operable to: (1) execute data access

operations optimized for local communications in order to access server object data; and (2) access a proxy component in order to access server object data. Rather Glass discloses a distributed processing computer system that is related to a remote proxy generator in a distributed processing computer system (Abstract).

The Applicants respectfully submit that the allegation in the present Office Action that Glass discloses all of the claimed features is respectfully traversed. Further, it is noted that the Office Action provides no concise explanation as to how Glass is considered to anticipate all of the limitations in amended independent claim 1. A prior art reference anticipates the claimed invention under 35 U.S.C. § 102 only if each and every element of a claimed invention is identically shown in that single reference. MPEP § 2131. (Emphasis Added). Applicants respectfully point out that "it is incumbent upon the [E]xaminer to identify wherein each and every facet of the claimed invention is disclosed in the applied reference." *Ex parte Levy*, 17 U.S.P.Q.2d (BNA) 1461, 1462 (Pat. & Tm. Off. Bd. Pat. App. & Int. 1990). The Applicants respectfully submit that the Office Action has failed to establish a *prima facie* case of anticipation in amended independent claim 1 under 35 U.S.C. § 102 with respect to Glass because Glass fails to identically disclose each and every element of the Applicants claimed invention, arranged as they are in Applicants claim.

The Applicants further submit that the Examiner has misdescribed the distributed processing computer system disclosed in Glass. For example, the Examiner asserts that Glass inherently includes a server component [server system 12 and subject object 18 of Figure 1] in a first container [again, server system 12 of Figure 1]. (7 July 2005 Office Action, Page 3). The Applicants respectfully traverse the Examiner's assertions regarding the inherent features of Glass. Glass does not disclose, teach or suggest a server object or a server component within a first container. Rather Glass merely discloses a subject object 18 within a server system 12. Glass does not disclose a server component supporting one or more server objects having associated data, within a first container. In fact, the Office Action alleges that both the server system 12 and the subject object 18 of Glass are somehow representative of the server component of the Applicants invention.

The Applicants respectfully disagree. Thus Glass cannot provide for a server component that supports one or more server objects, within a first container, since the server system 12 of Glass cannot be both a server component and a first container.

In another example, the Examiner asserts that Glass inherently includes a client component [client system 14 and local object 20 of Figure 1] in a second container [again, client system 14 of Figure 1]. (7 July 2005 Office Action, Page 3). Glass does not disclose, teach or suggest a client object or a client component within a second container. Rather Glass merely discloses a local object 20 within a client system 14. Glass does not disclose a client component within a second container. In fact, the Office Action alleges that both the client system 14 and the local object 20 of Glass are somehow representative of the client component of the Applicants invention. The Applicants respectfully disagree. Thus Glass cannot provide for a client component within a second container, since the client system 14 of Glass cannot be both a client component and a second container.

In still another example, the Examiner asserts that Glass includes a “scheme makes the server objects transparent to both remote and local client component.” (7 July 2005 Office Action, Page 3). The Applicants do not understand what “scheme” the Examiner is referring to and respectfully requests further explanation from the Examiner. The Applicants further submit that amended independent claim 1 does not include the subject phrase “scheme” and do not understand why the Examiner is asserting the subject phrase.

The Applicants further submit that Glass does not disclose a server component that is substantially transparent to a client component whether the server component is local to or remote from the client component. The Applicants direct the Examiner’s attention to the cited text of Glass, relied upon by the Examiner, which states:

Remote proxies also hide the location of the subject object from the requesting local object. Therefore, any local object can assume, from an access point of view, that any object it needs is local. Local object 20 communicates with remote proxy object 22 which then communicates with subject object 18 via distributed object management system 16. By doing

this, local object 20 is unconcerned with the location of subject object 18. (Column 6, Lines 27-34). (Emphasis Added).

Although Glass discloses that local object 20 is unconcerned with the location of subject object 18, Glass does not disclose, teach, or suggest that a server component that supports one or more server objects, within a first container is substantially transparent to a client component within a second container. Rather the above cited text of Glass makes clear that although local object 20 is unconcerned with the location of subject object 18, client system 14 is very concerned with the location of subject object 18. In fact, remote proxy object 22 contained in client system 14 communicates with subject object 18 of server system 12 via the distributed object management system 16. Furthermore, distributed object management system 16 provides the communication link between server system 12 and client system 14 and is aware of whether server system 12 is local or remote with client system 14 thereby making client system 14 aware of the location of server system 12. Thus, Glass cannot provide a server component that supports one or more server objects, within a first container that is substantially transparent to a client component within a second container, since Glass's server system 12 is in no way transparent to client system 14.

The Applicants respectfully submit that the Examiner is using the subject Application as a template to formulate reconstructive hindsight to reach this conclusion and reconstructive hindsight is improper under 35 U.S.C. § 102. The Applicants further submit that Glass does not teach, suggest, or even hint at a component-based distributed software system comprising a client component distributed from a server component supporting server objects and operable to access data that is substantially transparent, whether local or remote to the client component and further operable to: (1) execute data access operations optimized for local communications in order to access server object data; and (2) access a proxy component in order to access server object data. Thus, the Office Action has failed to establish a *prima facie* case of anticipation in amended independent claim 1 under 35 U.S.C. § 102 with respect to Glass because Glass fails to identically disclose each and every element of amended independent claim 1, arranged as they are in Applicants claim.

The Applicants further submit that Glass does not disclose, teach or suggest the optimization technique disclosed in the claimed invention of synchronizing between proxy objects and their corresponding server objects in order to execute data access operations for remote or local communications. For example, the Examiner asserts that Glass discloses system optimization including reducing requirements, minimize compile and load time, optimize system performance. (7 July 2005 Office Action, Page 15). The Applicants respectfully traverse the Examiner's assertions regarding the optimization in Glass. Glass does not disclose, teach or suggest the optimization technique disclosed in the claimed invention of synchronizing between proxy objects and their corresponding server objects in order to execute data access operations for remote or local communications.

Thus, the allegation in the present Office Action that Glass discloses all of the claimed features is respectfully traversed. Further, it is noted that the Office Action provides no concise explanation as to how Glass is considered to anticipate all of the limitations in amended independent claim 1. A prior art reference anticipates the claimed invention under 35 U.S.C. § 102 only if each and every element of a claimed invention is identically shown in that single reference. MPEP § 2131. Applicants respectfully point out that "it is incumbent upon the [E]xaminer to identify wherein each and every facet of the claimed invention is disclosed in the applied reference." *Ex parte Levy*, 17 U.S.P.Q.2d (BNA) 1461, 1462 (Pat. & Tm. Off. Bd. Pat. App. & Int. 1990). The Applicants respectfully submit that the Office Action has failed to establish a prima facie case of anticipation in amended independent claim 1 under 35 U.S.C. § 102 with respect to Glass because Glass fails to identically disclose every element of the Applicants claimed invention, arranged as they are in Applicants claim.

With respect to amended independent claims 11, 12, 15, 25-28 and independent claims 13 and 14 each of these claims includes limitations similar to those discussed above in connection with amended independent claim 1. Thus, amended independent claims 11, 12, 15, 25-28 and independent claims 13 and 14 are considered patentably distinguishable over Glass for at least the reasons discussed above in connection with amended independent claim 1. Furthermore, dependent claims 2-5 and 8-10 which depend from amended independent claim 1 and dependent claims 16-19 and 22-24 which

depend from amended independent claim 15 are also considered patentably distinguishable over Glass. Thus, dependent claims 2-5, 8-10, 16-19, and 22-24 are considered to be in condition for allowance for at least the reason of depending from an allowable claim.

Thus, for at least the reasons set forth herein, the Applicants submit that claims 1-5, 8-19, and 22-28 are not anticipated by Glass. The Applicants further submit that claims 1-5, 8-19, and 22-28 are in condition for allowance. Thus, the Applicants respectfully request that the rejection of claims 1-5, 8-19, and 22-28 under 35 U.S.C. § 102(e) be reconsidered and that claims 1-5, 8-19, and 22-28 be allowed.

THE LEGAL STANDARD FOR ANTICIPATION REJECTIONS UNDER 35 U.S.C. § 102:

The following sets forth the legal standards for "anticipation."

The events that can lead to anticipation can be divided into the following seven categories, all defined by statute:

1. Prior Knowledge: The invention was publicly known in the United States before the patentee invented it.
2. Prior Use: The invention was publicly used in the United States either (i) before the patentee invented it; or (ii) more than one year before he filed his patent application.
3. Prior Publication: The invention was described in a printed publication anywhere in the world either (i) before the patentee invented it; or (ii) more than one year before he filed his patent application.
4. Prior Patent: The invention was patented in another patent anywhere in the world either (i) before the patentee invented it; or (ii) more than one year before he filed his application.

5. On Sale: The invention was on sale in the United States more than one year before the patentee filed his application.

6. Prior Invention: The invention was invented by another person in the United States before the patentee invented it, and that other person did not abandon, suppress or conceal the invention.

7. Prior U.S. Patent: The invention was described in a patent granted on a patent application filed in the United States before the patentee made the invention.

Each of those seven events has its own particular requirements, but they all have the following requirements in common:

1. Anticipation must be shown by clear and convincing evidence.
2. If one prior art reference completely embodies the same process or product as any claim, the product or process of that claim is anticipated by the prior art, and that claim is invalid. To decide whether anticipation exists, one must consider each of the elements recited in the claim and determine whether all of them are found in the particular item alleged to be anticipating prior art.
3. There is no anticipation unless every one of those elements is found in a *single* prior publication, prior public use, prior invention, prior patent, prior knowledge or prior sale. One may not combine two or more items of prior art to make out an anticipation. One should, however, take into consideration, not only what is expressly disclosed or embodied in the particular item of prior art, but also what inherently occurred in its practice.
4. There cannot be an accidental or unrecognized anticipation. A prior duplication of the claimed invention that was accidental, or unrecognized, unappreciated, and incidental to some other purpose is not an invalidating anticipation.

Those four requirements must be kept in mind and applied to each kind of anticipation in issue. The following additional requirements apply to some categories of anticipation.

1. Prior Knowledge: An invention is anticipated if it was known by others in the United States before it was invented by the patentee. "Known," in this context, means known to the public. Private knowledge, secret knowledge or knowledge confined to a small, limited group is not necessarily an invalidating anticipation. Things that were known to the public only outside the United States are not invalidating anticipation.

2. Prior Use: An invention is anticipated if it was used by others before it was invented by the patentee, or more than one year before the patentee filed his patent application. "Use," in this context, means a public use.

3. Prior Publication: A patent is invalid if the invention defined by the Claims was described in a printed publication before it was invented by the patentee or more than one year prior to the filing date of his application. For a publication to constitute an anticipation of an invention, it must be capable, when taken in conjunction with the knowledge of people of ordinary skill in the art, of placing the invention in the possession of the reader. The disclosure must be enabling and meaningful. In determining whether the disclosure is complete, enabling, and meaningful, one should take into account what would have been within the knowledge of a person of ordinary skill in the art at the time, and one may consider other publications that shed light on the knowledge such a person would have had.

4. Prior Patent: If the invention defined by the claims was patented in the United States or a foreign country, either before it was invented by the inventor or more than one year before the inventor filed his patent application, then the invention was anticipated. The effective date for this type of anticipation is the date on which two things co-existed: (i) the owner of the referenced patent had the right to enforce that patent; and (ii) the reference patent was available to the public. What was "patented" in the reference patent is determined by what is defined by its claims, interpreted in the light of the general description.

5. On Sale: A patent is invalid if the invention claimed in it was on sale in the United States more than one year prior to the application filing date.

6. Prior Invention: If the invention defined by the claims was invented by another person, in the United States, before it was invented by the inventor, and that other person did not abandon, suppress, or conceal the invention, the invention lacks novelty. A prior invention, even if put in physical form and shown to produce the desired result, is not an invalidating anticipation unless some steps were taken to make it public. However, it is not necessary that the inventor had knowledge of that prior invention.

7. Prior U.S. Application: A patent is invalid for lack of novelty if the invention defined by the claims was described in a United States patent issued on a patent application filed by another person before the invention was made by the inventor. The effective date of a prior application for purposes of this issue is the date on which it was filed in the United States. Foreign-filed patent applications do not apply. If the issued United States patent claims the benefit of more than one United States application, its effective date as an anticipation is the filing date of the first United States application that discloses the invention claimed in that referenced patent.

Experimental Use Exception: The law recognizes that it is beneficial to permit the inventor the time and opportunity to develop his invention. As such there is an "experimental use" exception to the "public use" and "on sale" rules. Even though the invention was publicly used or on sale, more than one year prior to the application filing date, that does not invalidate the patent, provided the principal purpose was experimentation rather than commercial benefit. If the primary purpose was experimental, it does not matter that the public used the invention or that the inventor incidentally derived profit from it.

When a public use or sale is shown, the burden is on the inventor to come forward with evidence to support the experimental use exception. Only experimentation by or under the control of the inventor qualifies for this exception. Experimentation by a third party, for its own purposes, does not qualify for this exception. Once the invention leaves the inventor's control, its use is a public one, even if further experimentation takes place.

The experimentation must relate to the claimed features of the invention. And it must be for the purpose of technological improvement, not commercial exploitation. If any

commercial exploitation does occur, it must be merely incidental to the primary purpose of experimentation. A test done primarily for marketing, and only incidentally for technological improvement, is a public use.

CONCLUSION:


In view of the foregoing amendments and remarks, this application is considered to be in condition for allowance, and early reconsideration and a Notice of Allowance are earnestly solicited.

Although the Applicant believes no fees are deemed to be necessary; the undersigned hereby authorizes the Commissioner to charge any additional fees which may be required, or credit any overpayments, to **Deposit Account No. 500777**.

Please link this application to Customer No. 53184 so that its status may be checked via the PAIR System.

Respectfully submitted,

9/16/05
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